Office - Supreme Court, U. S.
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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 601

ERIE FORGE COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

LEO BRADY,
20 Pine Street,
New York 5, N. Y.,

W. PITT GIFFORD,
615 Masonic Temple Building,
Erie, Pennsylvania,
Attorneys for Petitioner.

APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

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Petitioner, for reply, respectfully calls to the attention of this Honorable Court certain statements in the opposing brief which appear to be misstatements or erroneous conclusions.

The opposing brief, at the bottom of page 9 and on page 10, sets forth a "long and undeviating administrative practice" and in support thereof cites a mimeograph opinion which has been reversed at least in part, an unpublished opinion of the Commissioner and a recent letter from the Commissioner to the Attorney General gratuitously handed up to the Court of Appeals below in the course of the argument on the appeal. It is interesting to note that the said letter (opposing br. p. 29) refers to the alleged practice of the Bureau and points out that there has been no "authorized" departure therefrom. In our main brief we pointed out that a contrary administrative practice existed (pp. 27-30).

The Government also states at the top of page 11 of its brief that the taxpayer sought "expungement of the deficiencies and abatement of the assessment." This is not only a misstatement of fact but a complete distortion of the entire proceeding. The Court will note the odd treatment of this point on pages 5 and 11 of the opposing brief. The fact is that the Tax Court found that the sum total of the taxpayer's liability for the period in question did not include that portion of the delinquency penalty which petitioner claimed in its Tax Court proceeding had been erroneously assessed and for which this instant action is instituted.

On page 11 it is argued that Petitioner knew its case was not meritorious because it did not appeal from the Tax Court's decision. This conjecture is as untrue and unsound as various other statements and conclusions in the opposing brief. The fact of the matter is that the decision of the Tax Court was final and conclusive as to the Petitioner's entire tax liability for the period in question and taxpayer did not see fit to appeal from a decision which, in its opinion, represented an excessive amount but still less than might have been imposed. Specifically, as regards the penalty the amount determined as the final liability was approximately one-fifth of the amount of potential liability.

Again we respectfully submit that the case justifies the issuance of a writ of certiorari.

Respectfully submitted,

LEO BRADY,
W. PITT GIFFORD,
Attorneys for Petitioner.

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MAY 15 1952
CHARLES ELMORE CROPLEY
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LEO BRADY,
20 Pine Street,
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W. PITT GIFFORD,
615 Masonic Temple Building,
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Attorneys for Petitioner.

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